

AMENDED IN SENATE SEPTEMBER 9, 1997

AMENDED IN SENATE AUGUST 25, 1997

AMENDED IN SENATE AUGUST 6, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 115

Introduced by Assembly Member Havice
(Principal coauthor: Assembly ~~Member~~ Members
***Bordonaro and Hertzberg*)**
(Coauthor: Senator Peace)

January 13, 1997

An act to amend Section 667.5 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 115, as amended, Havice. Sentencing.

Existing law requires the court to impose a 3-year sentence enhancement for each prior separate prison term served by the defendant if the prior term was for a “violent felony,” which includes a robbery perpetrated in an inhabited structure where the defendant personally used a deadly or dangerous weapon.

This bill would, for purposes of this provision, expand the definition of “violent felony” to add robbery of the first degree of an inhabited structure when committed in concert with 2 or more other persons. By expanding the scope of an existing sentence enhancement, the bill would impose a state-mandated local program.

~~This bill would incorporate additional changes in Section 667.5 of the Penal Code proposed by AB 793, to be operative if AB 793 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.~~

This bill would include, in Section 667.5 of the Penal Code, a cross-reference to Section 12022.53 of that code as proposed by AB 4, to be operative only if AB 4 is enacted and becomes effective on or before January 1, 1998.

This bill also would incorporate additional changes in Section 667.5 of the Penal Code enacted by AB 793 (Ch. 371, Stats. 1997).

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.5 of the Penal Code is
2 amended to read:
3 667.5. Enhancement of prison terms for new offenses
4 because of prior prison terms shall be imposed as follows:
5 (a) Where one of the new offenses is one of the violent
6 felonies specified in subdivision (c), in addition and
7 consecutive to any other prison terms therefor, the court
8 shall impose a three-year term for each prior separate
9 prison term served by the defendant where the prior
10 offense was one of the violent felonies specified in
11 subdivision (c). However, no additional term shall be
12 imposed under this subdivision for any prison term
13 served prior to a period of 10 years in which the defendant
14 remained free of both prison custody and the commission
15 of an offense which results in a felony conviction.
16 (b) Except where subdivision (a) applies, where the
17 new offense is any felony for which a prison sentence is
18 imposed, in addition and consecutive to any other prison



1 terms therefor, the court shall impose a one-year term for
2 each prior separate prison term served for any felony;
3 provided that no additional term shall be imposed under
4 this subdivision for any prison term served prior to a
5 period of five years in which the defendant remained free
6 of both prison custody and the commission of an offense
7 which results in a felony conviction.

8 (c) For the purpose of this section, “violent felony”
9 means any of the following:

10 (1) Murder or voluntary manslaughter.

11 (2) Mayhem.

12 (3) Rape as defined in paragraph (2) or (6) of
13 subdivision (a) of Section 261 or paragraph (1) or (4) of
14 subdivision (a) of Section 262.

15 (4) Sodomy by force, violence, duress, menace, or fear
16 of immediate and unlawful bodily injury on the victim or
17 another person.

18 (5) Oral copulation by force, violence, duress, menace,
19 or fear of immediate and unlawful bodily injury on the
20 victim or another person.

21 (6) Lewd acts on a child under the age of 14 years as
22 defined in Section 288.

23 (7) Any felony punishable by death or imprisonment
24 in the state prison for life.

25 (8) Any felony in which the defendant inflicts great
26 bodily injury on any person other than an accomplice
27 which has been charged and proved as provided for in
28 Section 12022.7 or 12022.9 on or after July 1, 1977, or as
29 specified prior to July 1, 1977, in Sections 213, 264, and 461,
30 or any felony in which the defendant uses a firearm which
31 use has been charged and proved as provided in Section
32 12022.5 or 12022.55.

33 (9) Any robbery perpetrated in an inhabited dwelling
34 house, vessel, as defined in Section 21 of the Harbors and
35 Navigation Code, which is inhabited and designed for
36 habitation, an inhabited floating home as defined in
37 subdivision (d) of Section 18075.55 of the Health and
38 Safety Code, an inhabited trailer coach, as defined in the
39 Vehicle Code, or in the inhabited portion of any other
40 building, wherein it is charged and proved that the

1 defendant personally used a deadly or dangerous
2 weapon, as provided in subdivision (b) of Section 12022,
3 in the commission of that robbery.

4 (10) Arson, in violation of subdivision (a) of Section
5 451.

6 (11) The offense defined in subdivision (a) of Section
7 289 where the act is accomplished against the victim's will
8 by force, violence, duress, menace, or fear of immediate
9 and unlawful bodily injury on the victim or another
10 person.

11 (12) Attempted murder.

12 (13) A violation of Section 12308.

13 (14) Kidnapping, in violation of subdivision (b) of
14 Section 207.

15 (15) Kidnapping, as punished in subdivision (b) of
16 Section 208.

17 (16) Continuous sexual abuse of a child, in violation of
18 Section 288.5.

19 (17) Carjacking, as defined in subdivision (a) of
20 Section 215, if it is charged and proved that the defendant
21 personally used a dangerous or deadly weapon as
22 provided in subdivision (b) of Section 12022 in the
23 commission of the carjacking.

24 (18) Any robbery of the first degree punishable
25 pursuant to subparagraph (A) of paragraph (1) of
26 subdivision (a) of Section 213.

27 *(19) A violation of Section 264.1.*

28 The Legislature finds and declares that these specified
29 crimes merit special consideration when imposing a
30 sentence to display society's condemnation for these
31 extraordinary crimes of violence against the person.

32 (d) For the purposes of this section, the defendant
33 shall be deemed to remain in prison custody for an offense
34 until the official discharge from custody or until release
35 on parole, whichever first occurs, including any time
36 during which the defendant remains subject to
37 reimprisonment for escape from custody or is
38 reimprisoned on revocation of parole. The additional
39 penalties provided for prior prison terms shall not be



1 imposed unless they are charged and admitted or found
2 true in the action for the new offense.

3 (e) The additional penalties provided for prior prison
4 terms shall not be imposed for any felony for which the
5 defendant did not serve a prior separate term in state
6 prison.

7 (f) A prior conviction of a felony shall include a
8 conviction in another jurisdiction for an offense which, if
9 committed in California, is punishable by imprisonment
10 in the state prison if the defendant served one year or
11 more in prison for the offense in the other jurisdiction. A
12 prior conviction of a particular felony shall include a
13 conviction in another jurisdiction for an offense which
14 includes all of the elements of the particular felony as
15 defined under California law if the defendant served one
16 year or more in prison for the offense in the other
17 jurisdiction.

18 (g) A prior separate prison term for the purposes of
19 this section shall mean a continuous completed period of
20 prison incarceration imposed for the particular offense
21 alone or in combination with concurrent or consecutive
22 sentences for other crimes, including any
23 reimprisonment on revocation of parole which is not
24 accompanied by a new commitment to prison, and
25 including any reimprisonment after an escape from
26 incarceration.

27 (h) Serving a prison term includes any confinement
28 time in any state prison or federal penal institution as
29 punishment for commission of an offense, including
30 confinement in a hospital or other institution or facility
31 credited as service of prison time in the jurisdiction of the
32 confinement.

33 (i) For the purposes of this section, a commitment to
34 the State Department of Mental Health as a mentally
35 disordered sex offender following a conviction of a felony,
36 which commitment exceeds one year in duration, shall be
37 deemed a prior prison term.

38 (j) For the purposes of this section, when a person
39 subject to the custody, control, and discipline of the
40 Director of Corrections is incarcerated at a facility

1 operated by the Department of the Youth Authority, that
2 incarceration shall be deemed to be a term served in state
3 prison.

4 (k) Notwithstanding subdivisions (d) and (g) or any
5 other provision of law, where one of the new offenses is
6 committed while the defendant is temporarily removed
7 from prison pursuant to Section 2690 or while the
8 defendant is transferred to a community facility pursuant
9 to Section 3416, 6253, or 6263, or while the defendant is on
10 furlough pursuant to Section 6254, the defendant shall be
11 subject to the full enhancements provided for in this
12 section.

13 This subdivision shall not apply when a full, separate,
14 and consecutive term is imposed pursuant to any other
15 provision of law.

16 SEC. 2. Section 667.5 of the Penal Code is amended to
17 read:

18 667.5. Enhancement of prison terms for new offenses
19 because of prior prison terms shall be imposed as follows:

20 (a) Where one of the new offenses is one of the violent
21 felonies specified in subdivision (c), in addition and
22 consecutive to any other prison terms therefor, the court
23 shall impose a three-year term for each prior separate
24 prison term served by the defendant where the prior
25 offense was one of the violent felonies specified in
26 subdivision (c). However, no additional term shall be
27 imposed under this subdivision for any prison term
28 served prior to a period of 10 years in which the defendant
29 remained free of both prison custody and the commission
30 of an offense which results in a felony conviction.

31 (b) Except where subdivision (a) applies, where the
32 new offense is any felony for which a prison sentence is
33 imposed, in addition and consecutive to any other prison
34 terms therefor, the court shall impose a one-year term for
35 each prior separate prison term served for any felony;
36 provided that no additional term shall be imposed under
37 this subdivision for any prison term served prior to a
38 period of five years in which the defendant remained free
39 of both prison custody and the commission of an offense
40 which results in a felony conviction.

(c) For the purpose of this section, “violent felony” means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.

(9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson, in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim’s will

1 by force, violence, duress, menace, or fear of immediate
2 and unlawful bodily injury on the victim or another
3 person.

4 (12) Attempted murder.

5 (13) A violation of Section 12308.

6 (14) Kidnapping, in violation of subdivision (b) of
7 Section 207.

8 (15) Kidnapping, as punished in subdivision (b) of
9 Section 208.

10 (16) Continuous sexual abuse of a child, in violation of
11 Section 288.5.

12 (17) Carjacking, as defined in subdivision (a) of
13 Section 215, if it is charged and proved that the defendant
14 personally used a dangerous or deadly weapon as
15 provided in subdivision (b) of Section 12022 in the
16 commission of the carjacking.

17 (18) Any robbery of the first degree punishable
18 pursuant to subparagraph (A) of paragraph (1) of
19 subdivision (a) of Section 213.

20 (19) A violation of Section 264.1.

21 The Legislature finds and declares that these specified
22 crimes merit special consideration when imposing a
23 sentence to display society's condemnation for these
24 extraordinary crimes of violence against the person.

25 (d) For the purposes of this section, the defendant
26 shall be deemed to remain in prison custody for an offense
27 until the official discharge from custody or until release
28 on parole, whichever first occurs, including any time
29 during which the defendant remains subject to
30 reimprisonment for escape from custody or is
31 reimprisoned on revocation of parole. The additional
32 penalties provided for prior prison terms shall not be
33 imposed unless they are charged and admitted or found
34 true in the action for the new offense.

35 (e) The additional penalties provided for prior prison
36 terms shall not be imposed for any felony for which the
37 defendant did not serve a prior separate term in state
38 prison.

39 (f) A prior conviction of a felony shall include a
40 conviction in another jurisdiction for an offense which, if

1 committed in California, is punishable by imprisonment
2 in the state prison if the defendant served one year or
3 more in prison for the offense in the other jurisdiction. A
4 prior conviction of a particular felony shall include a
5 conviction in another jurisdiction for an offense which
6 includes all of the elements of the particular felony as
7 defined under California law if the defendant served one
8 year or more in prison for the offense in the other
9 jurisdiction.

10 (g) A prior separate prison term for the purposes of
11 this section shall mean a continuous completed period of
12 prison incarceration imposed for the particular offense
13 alone or in combination with concurrent or consecutive
14 sentences for other crimes, including any
15 reimprisonment on revocation of parole which is not
16 accompanied by a new commitment to prison, and
17 including any reimprisonment after an escape from
18 incarceration.

19 (h) Serving a prison term includes any confinement
20 time in any state prison or federal penal institution as
21 punishment for commission of an offense, including
22 confinement in a hospital or other institution or facility
23 credited as service of prison time in the jurisdiction of the
24 confinement.

25 (i) For the purposes of this section, a commitment to
26 the State Department of Mental Health as a mentally
27 disordered sex offender following a conviction of a felony,
28 which commitment exceeds one year in duration, shall be
29 deemed a prior prison term.

30 (j) For the purposes of this section, when a person
31 subject to the custody, control, and discipline of the
32 Director of Corrections is incarcerated at a facility
33 operated by the Department of the Youth Authority, that
34 incarceration shall be deemed to be a term served in state
35 prison.

36 (k) Notwithstanding subdivisions (d) and (g) or any
37 other provision of law, where one of the new offenses is
38 committed while the defendant is temporarily removed
39 from prison pursuant to Section 2690 or while the
40 defendant is transferred to a community facility pursuant

1 to Section 3416, 6253, or 6263, or while the defendant is on
2 furlough pursuant to Section 6254, the defendant shall be
3 subject to the full enhancements provided for in this
4 section.

5 This subdivision shall not apply when a full, separate,
6 and consecutive term is imposed pursuant to any other
7 provision of law.

8 ~~SEC. 3. Section 2 of this bill incorporates amendments~~
9 ~~to Section 667.5 of the Penal Code proposed by both this~~
10 ~~bill and AB 793. It shall only become operative if (1) both~~
11 ~~bills are enacted and become effective on or before~~
12 ~~January 1, 1998, (2) each bill amends Section 667.5 of the~~
13 ~~Penal Code, and (3) this bill is enacted after AB 793, in~~
14 ~~which case Section 1 of this bill shall not become~~
15 ~~operative.~~

16 *SEC. 3. Section 2 of this act shall become operative*
17 *only if AB 4 is enacted and becomes effective on or before*
18 *January 1, 1998, in which case Section 1 of this bill shall not*
19 *become operative.*

20 SEC. 4. The Legislature finds and declares that the
21 amendment of Section 667.5 of the Penal Code made by
22 ~~Section 2 of this act which adds Sections 1 and 2 of this act~~
23 *which add* Section 264.1 of the Penal Code to the list of
24 enumerated offenses defined as “violent felonies” does
25 not constitute a change in, but is declaratory of, existing
26 law.

27 SEC. 5. No reimbursement is required by this act
28 pursuant to Section 6 of Article XIII B of the California
29 Constitution because the only costs that may be incurred
30 by a local agency or school district will be incurred
31 because this act creates a new crime or infraction,
32 eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section
34 17556 of the Government Code, or changes the definition
35 of a crime within the meaning of Section 6 of Article
36 XIII B of the California Constitution.

37 Notwithstanding Section 17580 of the Government
38 Code, unless otherwise specified, the provisions of this act

1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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